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The Rights of Police Officers: Research on How Court Decisions Interpret Police Officers Rights Against Compulsory Self Incrimination

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The Rights of Police Officers
Research on How Court Decisions
Interpret Police Officers Rights Against
Compulsory Self Incrimination

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ABSTRACT

This research will investigate the various rights of law enforcement personnel (officers and civilian employees) in the workplace, focusing on constitutional rights against compulsory self-incrimination. Miranda Warnings (a person's right to remain silent) are ingrained in our vocabulary since 1966, for those being questioned about criminal activity.

The Author will predominantly investigate police officers and other public employees that are questioned for work place misconduct. Garrity Rights or Warnings are given to compel employees to answer questions that deal specifically, narrowly, and directly tailored to the employee's job, or face discipline for insubordination that could result in termination. For those public employees that are unionized or have some type of recognized bargaining unit, Weingarten Rights are afforded them, which provide the right to legal counsel or union representation prior to being interviewed for workplace misconduct or criminal activity. When property rights exist, all public employees prior to being disciplined have the right to a Loudermill Hearing to have a chance to hear the charges against them and present a defense (Breci, 2004).

Police agencies are required to conduct internal investigations of complaints against personnel for several reasons: to protect the agency and its personnel against civil litigation, to instill public confidence in the agency, protect personnel from false allegations, and to protect the public from true police misconduct (Metro-Dade Police Department, 2003).

This research paper will primarily employ the Qualitative Research Design Method and Qualitative Method for the survey to Internal Affairs Investigators, in APA format.

THE RIGHTS OF POLICE OFFICERS

INTRODUCTION

Since 1967, public employees in the United States have been afforded the constitutional rights to be free from compulsory self-incrimination when confronted by supervisor's demands to answer questions involving some degree of misconduct. Forty-years later very few of the 7.8 million state and federal workers, (U.S. Census Bureau, March, 2005), and an estimated 17 million municipal, county, and local public employees and supervisors have ever heard of these rights.

The above rights stem from a case in 1966, when police officers from various boroughs in New Jersey were investigated by the New Jersey State Police for allegedly fixing traffic tickets. Each officer was given the Miranda Warning, (Miranda v. Arizona, 1966); advising anything they say could be used against them in a criminal trial. The officers admitted to what they did, under threat that if they did not tell the truth, they would be subject to termination. The officers were not only fired for their actions, they were convicted for their crimes. The U.S. Supreme Court in *Garrity v. New Jersey*, 1967 ruled that:

The threat of removal from public office under the forfeiture-of-office statute to induce the petitioners to forgo the privilege against self-incrimination secured by the Fourteenth Amendment rendered the resulting statements involuntary and therefore inadmissible in the state criminal proceedings...The choice given petitioners either to forfeit their jobs or to incriminate themselves constituted coercion. (p. 495-500)

This research will focus on past and present court cases and literature dealing with the rights of not only police officers but also all public employees. It will look at integrity and ethics issues along with how Internal Affairs or Professional Standards Investigators adhere to these rights and how different judicial areas of the country interpret case law on Garrity (See Appendix A-C), and Miranda Warning (See Appendix D). Weingarten Rights apply to employees working in agencies with collective bargaining units or unions (Right to Representation See Appendix E & F). All public employees have Loudermill Rights involving a pre-disciplinary hearing prior to termination (Aitchison, 2004).

Exploring this research is important as it describes about one out of every twelve people in the work force. They include all Federal and State employees, all Municipal and County Employees and Teachers. The Rights of public employees against compulsory self-incrimination is so little known one might think that a concerted effort has taken place to withhold this information. The rights of public employees and the methods supervisors and investigators use to ensure those rights will be documented in a Qualitative Research Methods Design.

For examples of what Professional Standards/Internal Affairs Sections in police departments throughout the country have the responsibility to investigate, please See Appendix H: Commission on Accreditation of Law Enforcement Agencies guidelines (CALEA, 2006).

PURPOSE

The objective for this research is to not only inform the reader, but all law enforcement officers and public employees of their constitutional rights when allegations of misconduct are brought against them. Supervisors should understand the protocols of investigating allegations of criminal misconduct by public employees, and the differences in investigating allegations of employee misconduct not involving a crime. The major questions to be answered in this research involves who Garrity and Miranda Warnings apply to, and if they must be given on every investigation involving employee misconduct. Past case studies and court cases will be researched and their outcomes analyzed to find consistencies or inconsistencies in the interpretation of the law.

METHODOLOGY

This research was conducted during the year 2007. Qualitative Research Methods were used throughout this research project from a hermeneutic perspective, which “assumes that research must tell the story of human behavior, attitudes, or feelings through a naturalistic inquiry” (IDS 804, Module 17, p.2). This aspect is subjective and deals with people being observed or case studies being evaluated. The author was as unbiased as possible in the interpretation of data. Understanding what was written in content and context will include a rhetoric analytic approach (IDS 804, Module 19). A group of forty senior supervisory investigators belonging to the Kansas Internal Affairs Investigators Association were used for peer review and evaluation of the research. Those tasked with investigating misconduct at counties, municipalities, and state offices

in the State of Kansas, were interviewed on their methods to discover how they ensure employee's due process rights are protected (See Appendix I). "Due process requires providing notice of all reasons upon which proposed disciplinary action is based. When disciplinary action is taken for reasons not disclosed by the employer, persons' due process rights are violated" (Bass v. City of Albany, 1992).

Case studies throughout the United States were researched by use of the Internet and World Wide Web. The search methods included key word searches for information on the subject of: Employee Discipline, Employee Termination, Garrity Warnings, Miranda Warnings, Weingarten Rights, Loudermill Hearings, Officer Integrity, Officer Accountability, Compulsory Self-incrimination, Internal Investigations, Professional Standards, Police Corruption, Police Ethics. Search findings were evaluated on their relevance and whether they were from U.S. case law, police magazines, journals, or other periodicals. Articles not meeting the criteria involving public employees were discarded for lack of relevance.

The next step was to access information from University websites to gain entry into websites that were restricted to member associations or educational institutions.

The final step was to access known police websites, (i.e.), Officer.com, Fraternal Order of Police.com, and FBI.gov. Other source materials included *Research Design; Qualitative, Quantitative, and Mixed Methods Approaches*, 2nd Edition by John Creswell 2003. *The Rights of Law Enforcement Officers*, 5th Edition by Will Aitchison 2004. *Recent Developments in Public Safety Labor*

Relations, by Labor Relations Information System 2007. Also included were material from university texts on law enforcement operations and management, and government reference material and statistics.

Many theories advocate employee's rights are the responsibility of all managers and supervisors regardless if working in the public or private sector. There are certain constants employees rely on and it is incumbent on supervisors to protect these rights no matter what the consequences (Substantive Theories IDS 804, Module 17). Employees' rights must be systematic, unbiased and comprehensive ensuring the process is the same for everyone. The results of this paper's research will be subjective in nature as an inductive process will be more reliable than strict cause and effect assumptions in a deductive process.

Some of the relationships presented are the supervisor and subordinate relationship, the taxpayer and the public servant relationship, the spousal relationship, and the police officer and the suspect relationship. Variables such as age, sex and education may prove difficult to show a correlation to case studies, but were included when known. Dependent variables are recognizable in case studies dealing with case law, as some variables are always being manipulated or controlled. This manipulation is what causes (Causal Relationship IDS 804, Module 17), the independent variable to seek legal redress for violations of due process of constitutionally guaranteed rights.

The variables in this study are far-reaching but easily recognizable, as someone always first has to find themselves in some type of trouble with their supervisor or the law. Once out in the open, the supervisor makes a decision

based on the seriousness of the allegation as to what his/her response will be. If it is an allegation of criminal misconduct the supervisor should contact the police and let a trained investigator handle the interview/interrogation. If it is a violation of department or agency rules and regulations, the supervisor should investigate or delegate to someone with the skills and knowledge to investigate employee misconduct (Miami-Dade Police, 2003).

According to Aitchison (2004), "Somehow lost in the focus on the rights possessed by criminal suspects has been the notion that law enforcement officers [and all public employees] themselves possess rights. Those rights are often ill understood and sporadically applied" (p. 2).

In *Public Policy, Crime, and Criminal Justice*, Thomas Dye (1978), defines public policy simply as "whatever governments choose to do or not to do." (p. 24).

Hancock & Sharp (2004) found: The numerous schemes for depicting the elements of science are considerably more complex, but a five-unit framework is common. Scientific theory consists of that which is to be explained (the dependent variables,), that which is used to explain (the independent variables), systematic procedures for gathering information (a method), assumptions about the nature of knowledge (epistemological premises), and cultural-political links (persuasive force). (p. 24)

The basic goals of this section are to analyze the primary and secondary sources of research data that are available in this field dealing with law enforcement officers and public employees rights as established by state and

federal law. There are thousands of case studies dealing with case law on public employees that were terminated for bad conduct. The author will attempt to limit the discussion to relevant and reliable information; focusing the reader to arguments that may mean something to them in dealing with problems in their own place of employment.

Law enforcement in general has struggled to be recognized not only as a profession but to also gain acceptance in the social sciences, because of the inherent process of validation of research. According to Kinnaird (2003), "While efforts are being made in contemporary police society to attain professional status, officers remain cynical and frustrated by irrational management and illogical variations in policies and procedures" (p. 11).

For the purpose of analysis, More, Wegener & Miller (2003) found public employees and especially police officers misconduct can be listed in three categories:

1. Nonfeasance. Failure to take appropriate actions as required by law or department policy.
2. Misfeasance. Performing a required and lawful task in an unacceptable, inappropriate, or unprofessional manner.
3. Malfeasance. Wrongdoing or illegal conduct that depends on or is related to the misuse of legitimate authority. (p. 360)

For those that have a basic knowledge of the law, you might find it interesting that others don't have a clue what police can legally do and not do. When officers arrest someone on TV, some people automatically think they have to read the suspect their Miranda Rights or their Constitutional Protections will be violated. When a person states they want to speak to an attorney, one might think that officers keep them on hand in an awaiting vehicle or they have offices

at the police station. In a sting operation, a target of the investigation might ask the person if they are a cop; as if the case would be thrown out because the person was entrapped. These misconceptions and misinformation are prevalent throughout the United States. It is no wonder that millions of public employees are clueless on what their rights as employees are (Akhtar & Hansma, 2006).

In 1977, California (Lackie & Dammeier, 2003) was the first of sixteen states (Aitchison, 2004) to adopt peace officer bill of rights statutes that impose additional constraints on the disciplinary process. When supervisors uncover employee misconduct, they must determine what warnings are applicable and administer discipline when required. Garrity protections apply when employees are compelled to answer questions in official investigations. If information uncovered is criminal in nature, it cannot be used against the employee in a criminal prosecution. For Garrity to apply, employees must believe their statements are compelled under the threat of disciplinary action. (More et al. 2003).

In the centuries prior to the 21st century, police in the large cities of America were considered incompetent, brutal and corrupt. Stories abound from law enforcement officers taking bribes, kickbacks, and demanding money for protection from business owners. Small numbers of officers throughout the history of organized police have been what we term “rotten-apples” (Hickman et al. 2004).

Cox (1996), agrees with Hickman et al. (2004), when he states “Recognition that those officers who actively seek out corrupt activities are

relatively few has led many police administrators to espouse the “rotten apple” theory, which holds that while there are a few corrupt officers in policing, most officers are unaffected by corruption” (p.186-187).

In the *National Sheriff Magazine*, Breci and Kinnaird (July-August, 2004) found:

Allegations of employee misconduct can have a damaging effect on a law enforcement agency. In investigating such allegations, it is critical for the agency to identify and understand the origins of misconduct. Be it an inappropriate or non-existent training environment, or a poor or non-existent administrative policy, several areas can easily serve as a breeding ground for misconduct and liability. Not surprisingly, however, it oftentimes starts right from the beginning - the hiring process. Hiring the best employee will most certainly help to ensure a low-risk liability profile in respect to law enforcement misconduct and subsequent litigation. (p. 37)

The Police Department Disciplinary Bulletin is a monthly publication of Quinlan Publishing, Boston, MA. This bulletin is peer reviewed by Police Chiefs, Deputy Chiefs of Police and University Professors from Sam Houston State University and Northeastern University. The publication deals strictly with disciplinary actions by public employees. In a case titled: *Officer fired after alleged incident of sexual harassment*. Citation: Granado v. The City of San Carlos, (2006). An Officer worked for the Redwood City, CA. Police Department in 2001, when he asked a clerk to follow him into an unoccupied office where he hugged and tried to kiss her neck. The Clerk complained to her supervisors.

The officer apologized and told her it would not happen again. He was investigated and fired. The officer filed a grievance that eventually ended up in the California Court of Appeals where he was found to have been fired for no just cause (Quinlan Publishing, 2006). This is an example of the redress public employees have when they are wrongfully terminated. This would seldom happen in the private sector where employees are generally At-will employees. At-will meaning an employee can be discharged for no reason (Free Advice.com, 2003), unless they are members of a protected class and can show they were unlawfully discriminated against, based on Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of: Race, Color, Gender, National Origin, and Religion. The Kansas Act Against Discrimination (KAAD), KSA 44-1001 *et. Seq.*, also prohibits discrimination based on Age and Disability.

For-cause employees are generally those having the protections of Unions, written policies, rules and regulations and disciplinary procedures to protect them. “An employee handbook can create contractual rights if the language is specific, the offer was communicated to the employee and the employee accepted the offer by continuing his employment” (Hitchens v. Yonker, 1997).

In the Labor Relations Information System (March, 2007), an issue titled, “Major Garrity Decision Out of California Has Far-Reaching Implications For Disciplinary Investigations.” The article stated this is potentially the most important case in 40 years interpreting Garrity v. New Jersey. A public defender

in Santa Clara County, California was under investigation for lying to a judge. At a disciplinary interview, the public defender was asked questions his attorney refused to let him answer. He stated he would only answer questions if given a formal grant of immunity from a court. The public defender was terminated for insubordination and refusing to answer questions. He appealed his termination.

The court stated, a state agency cannot compel its employees to answer incriminating questions over Fifth Amendment objections unless it first grants them protection against the use of their compelled answer, and evidence derived from those answers, in any later criminal prosecution...The Court held, the employer must obtain a formal grant of immunity before an employee can be forced to participate in a disciplinary interview. (p.1-2)

This is an example of one States' interpretation of a long standing U.S. Supreme Court Decision. Many States could view this as an affront to questioning public employees about any misconduct without first getting a judge to grant the employee immunity, just in case they say something that may incriminate themselves criminally. "The employees assertion of this right may pose impediments to disciplinary investigations, but surely it is not for the courts to solve that problem with a blanket regime of automatic immunity" (LRIS, 2007, p. 3).

An important partner to good investigative work is documentation of work place performance. In "*Documenting Employee Discipline: Developing and Implementing Documentation Procedures to Protect Your Organization*" Daniel

Long, Counsel on Education in Management wrote about how managers and supervisors wish their time was not spent documenting all the various disciplinary problems with their employees. However, they know in every supervisory class and meetings with Human Resources, the response is to document everything, just in case. Keeping pertinent documentation provides managers with the necessary tools to make decisions regarding employee performance (Long, 1999).

In our review of history and in postpositive thinking, public policy and criminology are related hermeneutically. Hancock (2004), found, "Science provides a means of understanding policy issues in a particular way, but at the same time, the very stuff of our science is defined by a set of political, historical, and social contexts that furnish the linguistic and cultural frameworks to make science itself understandable" (p. 27).

In science there are shared assumptions about knowledge being factual, verifiable, and capable of falsification. This places the scientist and policy maker on opposite sides, each having its own methods and language to determine what constitutes knowledge (Hancock & Sharpe, 2004).

The integrity of law enforcement officers is best perceived as a by-product of their behavior. Accountability of officers is paramount for public trust and confidence. When misconduct is uncovered, law enforcement must police its own ranks and take steps to maintain faith among the public. It is clear that police must monitor its employees and public opinion (Hickman, Piquero & Green. 2004).

The underlying values of a person are what make up their character qualities. The integrity and ethical makeup of individuals is very complex, involving many variables that can affect their performance on the job. For the most part we learn of a person's lack of integrity when they get into trouble. Research that focuses on public service employees, "corruption infers ideas about integrity absent its measurement. And, like some public policy questions, such as pornography, we may find it (integrity) difficult to define, but know it when we see it, or fail to see it as the case may be" (Hickman et al., 2004, 1.1).

Law enforcement across the nation came into existence from a need to enforce the mo'res and ethical standards of the time. Police agencies and communities count on their officers to be men and women of character who are responsible to those they serve. The members carry traditional and moral values that are widely held by the majority of our population. The very nature of policing in America is individualistic in nature, and a central feature of police work. Officers are empowered to act with little supervision, as the culture of our criminal justice agencies is the key to understanding how officers think and act (Crank. 2004. 279).

Kinnaird (2003) found, "Regardless of the context of police character, officers reveal their behavioral traits at some point in their recruitment or active duty...A police officer's fitness to wear the badge depends on the acquisition of habits of just behavior" (p. 13).

Internal Affairs, Professional Standards, Internal Review Units, or as some employees might say, "Rat Squads" are in existence to maintain the integrity of

the organization. Officers and civilian employees know if they violate department policies, rules and regulations, or commit various types of misconduct, someone in the organization is going to investigate them. These units are most feared by unethical employees as they feel it is not right to investigate one of their own. Internal review is perceived by line officers as tactics used by management to catch officers they don't like, versus uncovering wrongdoing (Crank. 2004).

LITERATURE REVIEW

In 1894, the Lexow Commission closed its hearing on corruption in the New York City Police Department stating it was "systematic and pervasive." By 1909, similar findings were found in almost every major U.S. city (Cox. 1996, p. 182).

For cops as for anyone else, money works like an acid on integrity. Bribes from bootleggers made the 1920's a golden era for crooked police.

Gambling syndicates in the 1950's were protected by a payoff system more elaborate than the Internal Revenue Service. In 1971, Frank Serpico brought to light police corruption in New York City, and the Knapp commission investigation that followed uncovered widespread corruption among officers of all ranks (p.182-3).

Honesty, integrity and ethical standards are perhaps more important for law enforcement agencies and its officers and civilian employees than for any other element of our society. Police personnel are given the authority by statute of life and death and may take someone's freedom or liberty away for minor transgressions of the law. Thus, someone that is tasked to enforce the law is

looked down upon when he/she violates the very laws and values they have vowed to enforce and protect. This violation of an officers code of conduct is not only detrimental to him or her, but to all of society (Gentile, 2002).

Investigations into employee misconduct is wrought with complexities as police and civilian administrators face the pressures from within the organization and especially from outside the organization for accountability. With constant pressures to find the truth, public employee's rights can be violated. With this goes the responsibilities of supervisors to understand the administrative and legal responsibilities they have to their employees to safeguard their rights (Colaprete, 2005).

The Commission on Accreditation of Law Enforcement Agencies found, "Every Agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person" (CALEA 52.1.4). See [Appendix G](#) for the Rights of Employees during an interview.

The following cases should give the reader a small insight into the complexities of the law and the various problems that unions and court jurisdictions throughout the country grapple with.

An officer can be disciplined for falsely denying alleged employment related conduct. The court said the due process clause does not include the ability to falsely deny misconduct allegations (LaChance v. Erickson, 1998).

In a related case, an internal affairs investigation interview was declared an “official proceeding” and therefore an officer who gives false testimony could be charged with perjury (*Melendres v. State*, 1999).

Even though Garrity protections were given to an employee. An employee’s compelled but false statements to investigators were admissible in a conviction for providing false and misleading information to state officials investigating a drug dealer’s death (*United States v. Veal*, 1998).

Officers [and other public employees] who exercise their rights under the 5th Amendment are subject to discipline or termination based in part upon adverse inference drawn from that silence; however, such discipline or termination cannot be based solely upon an officer [and other public employees] exercising their rights to remain silent (*Harrison v. Wille*, 1998).

Unless prohibited by state law or union contract, an employee who is afforded immunity under Garrity can be forced to take a polygraph examination as a condition of continued employment (*Wiley v. Mayor and City Council of Baltimore*, 1995).

The search of an employee’s office, desk and gym bag during an internal affairs investigation was legal based upon reasonable suspicion. A search for criminal evidence would require a search warrant. The Court will determine the primary motive in mixed motive cases.(*Lowe v. City of Macon*, 1989).

There was no reasonable expectation of privacy in an employee’s suitcase in the trunk of the police car when the suitcase was used to carry police equipment (*State v. Soddard*, 1994).

“At-Will” and “For-Cause” employment are still very much misunderstood by City Managers and County Administrators. A county’s “Disciplinary Action and Grievance Procedure” could modify a deputy sheriff’s at-will employment statutes, requiring some degree of misconduct (*Hollander v. Douglas Co.*, 2000). In Arkansas, an employee manual that lists progressive employee discipline does not alter the “at-will” status of an employee (*Thomson v. Adams*, 2001).

Disciplinary procedures written in an Illinois County’s personnel handbook sufficiently created contractual rights protecting a terminated employee (*Wood v. Wabash Co.*, 1999). This city’s employment handbook containing grievance procedures did not create a property interest in continued employment under the due process clause (*Border v. City of Crystal Lake*, 1996).

Texas county commissioners had no authority to modify the at-will status of sheriff’s deputies by adopting a county personnel manual requiring just cause for discharge. Without any legal effect, the manual did not provide a recognizable property interest in continued employment (*Garcia v. Reeves Co.*, 1994). And lastly, a Public employer’s written policies do not create property rights for due process purposes just because they are adopted and followed. They create property rights when they have been adequately promulgated (*Sawshe v. Simpson*, 1994).

Most disciplinary actions implicate constitutional concerns. The United States Constitution guarantees the civil rights of employees. The First Amendment to the Constitution restricts employer’s ability to discipline governmental employee’s speech and conduct, in reference to what they do and

say. “Generally speaking, courts apply this test, prescribed in *Connick v. Myers* (1983), when determining the constitutionality of disciplinary actions concerning speech and expressive conduct”:

Does the speech (conduct) have public value - does it touch upon matters of public concern? Does the value of the speech (conduct) outweigh the negative effect on the employer? Was the speech (conduct) a substantial, or motivating, factor for the disciplinary action? (Gillespie, 2004, p.1-2).

Balancing speech interests against agency interests. *Connick* requires determining whether the interest in promoting the speech outweighs an agency’s interest in efficient operation. If the agency’s interest outweighs the public interest, the conduct is not protected by the First Amendment (Gillespie, 2004).

Although an employee thought his conduct involved matters of public concern, he appeared in uniform, without permission from his supervisors, before a city governing body, where he spoke about, “image problems” of another officer. Although the employee spoke about a matter of public concern, his interest in speaking for the department was outweighed by the departments’ interest in maintaining who spoke on the agency’s behalf (*Moore v. city of Wynnewood*, 1995).

A “whistle blowing” case from Haysville, Kansas, involved an officer who disclosed confidential details of a homicide investigation to the media and the victim’s attorney. The officer alleged his fellow officers committed second-degree murder when they failed to render first aid to the victim who was shot by police. The agency dismissed the officer for publicly disclosing confidential information.

The courts upheld this termination based on the interests of the department in maintaining confidentiality and avoiding workplace disruption. Another important fact was the officer did not utilize proper internal channels (chain of command) to air his concerns. (*Lytle v. City of Haysville, 1998*).

On the Introduction page of this project, *Garrity v. New Jersey* mentioned the Fourteenth Amendment. Gillespie (2004) found:

Employee disciplinary actions frequently implicate the Due Process requirements of the Fifth and Fourteenth Amendments. Substantive due process analysis involves determining whether government action impacts constitutional rights, and if so, whether the action is constitutional because it advances a governmental interest; procedural due process analysis involves determining whether the government is required to provide procedural protections, such as notice and an opportunity to be heard, when taking disciplinary measures (p. 12).

The interest of the organization has to outweigh the interests of the employee when it comes to proactive investigations into employee misconduct. Agencies must employ early warning systems that alert them to the signs of employee misconduct. Undercover operations and surveillance of employees may be warranted when it may be the only way to uncover the truth. This approach could backfire by long-term mistrust within the agency if not conducted by credible supervisors or investigators (*Girodo, 1998*).

Employees who are terminated from their jobs, often challenge

the termination on grounds they were deprived of their right to a job. They feel their property or liberty interests in their jobs were protected by the Fifth and Fourteenth Amendments. This only occurs when employees actually have property and liberty interests afforded to them by their employers, contracts, or by State or Federal law (Gillespie, 2004).

In Kansas, a public employee's claim of entitlement to continued employment is determined by reference to state law; no property interest in a job exists unless it is created by statute, ordinance, or implied or written contracts. A property interest may be created by rules enacted by civil service boards, city or county ordinances, or expressed or implied statements of agreements establishing definite terms or conditions under which employees may be discharged. Without such established guidelines, no entitlements exist for Kansas employees, and as such would be termed, "at-will," subject to discharge without cause and with or without reason, and without notice, unless policy dictates otherwise (*Dickens V. Snodgrass, Dunlap & Co.*, 1994); *Pilcher v. Board of Wyandotte County Commissioners*, (1990).

The claim by employees that they were denied liberty interests, stem from the belief they were terminated without due process and their termination would stigmatize them by ruining their good name and reputation. Employees may fear that negative items placed in their personnel file and bad job recommendations may follow them, and prevent them from future employment. If such liberty interests are implicated, employers must afford name-clearing hearings (Gillespie, 2004).

When employees have a property or liberty interest in their job, procedural protections are required to safeguard those rights. Those employees facing discipline, must be given notice of the charges against them and the intended action of the supervisor. The reasons for such action must be given to support the intended action and an opportunity for the employee to present evidence, witnesses and to be heard (*Cleveland Board of Education v. Loudermill*, (1985)).

The U.S. Supreme Court ruled a police officer that has committed a felony crime may be suspended immediately, without the need for a Loudermill hearing. Because officers occupy positions of trust and high visibility in the communities, the discipline is not arbitrary as the officer was formerly charged with a crime (*Gilbert v. Homar*, 1997).

In *Golbeck v. City of Chicago* it was ruled that even a three-day suspension required a name clearing, Loudermill Hearing. When property interests [money] are involved, employees have procedural due process safeguards against pre-deprivation arbitrary discipline (*Golbeck v. City of Chicago*, 1992).

Accountability of public employees cannot be overstated. However, safeguarding their Fifth Amendment right against self-incrimination may interfere with a department's efforts for accountability and gathering critical information. Due process does not shield employees for falsely denying allegations. Employees are compelled to cooperate when given Garrity. Exercising an employees Fifth Amendment right is not cost free, as employees can be terminated for not responding candidly and truthfully (*Schofield*, 1998).

In smaller agencies the task of objectively investigating employee misconduct may not be possible, based on personal biases, prejudices, and grudges. If the above exists, outside assistance may be requested. Otherwise, the responsibility is usually placed with an uninvolved higher-ranking supervisor. The goal of all internal investigations is to find the truth, regardless of the consequences. Well-written and clearly defined policies are the guidelines that supervisors follow to ensure employee accountability. Vague policies will always be a defense for employees claiming they didn't know what they were doing was a violation of department policies, rules or regulations. Conduct that is unacceptable behavior, should clearly be defined as such, in policy (Kelly, 2003).

CONCLUSIONS

The right to "Garrity Protections" to be free from compulsory self incrimination applies to all public employees, which includes all employees working for public entities, such as police and firefighters, municipal and county government workers, state and federal employees, and all those employed by school districts, public colleges and universities. These protections are guarantees that information gained from a "Garrity" interview, will not be used against the employee in a criminal prosecution against him or her (Fifth Amendment Protections). It does not mean the information will not be used against them in an administrative action that could include termination for telling the truth, being deceptive, or for being silent when questioned.

For employees covered by union contracts or some other form of

collective bargaining agreements, “Weingarten rights” or the right to representation during an misconduct interview may apply. Normally, a covered employee must request a representative. Based on the contract agreement, some agencies are required to contact a representative prior to an interview. For those departments or agencies not under contract or agreements, “Weingarten rights” do not apply.

For all public employees, the right to a “Loudermill hearing” is a Constitutional right of due process. Employers are required to give an employee who faces some form of property or liberty deprivation a chance to hear the charges against them and to have an opportunity to clear their name of wrongdoing. Those not afforded this pre-deprivation hearing can challenge the discipline in a court of law and mount a wrongful termination or wrongful discipline lawsuit against the department.

According to many members of the Kansas Internal Affairs Investigators Association (2007), Garrity applies to every incident of misconduct that could result in some form of disciplinary action against a public employee. Other experts around the country feel Garrity is only necessary when a criminal violation has occurred and an employee is compelled to answer questions. Investigators and supervisors have differing opinions on Garrity being implied when a supervisor asks questions specifically directed and narrowly related to the performance of an employee’s official duties or fitness for office.

Michael E. Brooks (2002) study found the following Sanctions that Trigger Garrity:

All law enforcement officers regularly file reports of investigative activity. An officer who fails to do so in a particular case could be subject to administrative sanctions. An officer who never files reports eventually would be fired for nonperformance. An officer who refuses a superior's order to file a report concerning a specific incident could be dismissed for insubordination. Does this mean that any investigative report is subject to Garrity protection because the officer filing the report is subject to administrative sanctions, which might include termination, for failure to file the report? The case law since the Garrity decision clearly holds that only the threat of severe administrative sanctions will trigger the Garrity protection (p. 26-31).

Based on what Brooks (2002), stated above, law enforcement administrators should not be concerned that routine investigative reports will be cloaked with automatic Garrity immunity.

The essence of the Garrity Warning is short, sweet and to the point. "It applies only under an administrative investigation into a criminal act. Garrity is not required in a non-criminal investigation. If a governmental employee is questioned about their fitness for duty in a criminal investigation they must be given the Garrity warning. If the investigation is not criminal, Garrity does not apply" (Rider 2007).

In an article from the NJLawman.com (2003) titled "The State of IA Today" found: "The Garrity Rule is not automatically triggered simply because questioning is taking place. The officer must announce that he or she wants the

protections under Garrity.” This is an example of the differences from state to state on the interpretation of when Garrity is given. Many Investigators and supervisors will give the warnings on every employee misconduct investigation, others only on serious cases involving property or liberty interests, and as seen in New Jersey, only when requested by an employee. These three instances are why this is so problematic for supervisors, as case law in different judicial circuits of the United States, dictate what protocol each follows.

The major questions to be answered in this research involved who Garrity and Miranda Warnings apply to, and must they be given on every investigation involving employee misconduct. Hopefully the reader understands that Garrity applies to all public employees, not just police officers. Garrity is a protection for employees against compulsory self-incrimination. Miranda goes hand in hand with Garrity. A Miranda Warning, or your 5th Amendment right is a constitutional guarantee against self-incrimination; whereby Garrity compels an employee to speak, or suffer some form of discipline. Miranda has no such attachments.

Garrity protections are invoked by public employees and employers based on previous case law; by union contracts; by State Bill of Rights; or by information gained in training or at seminars on investigating allegations of employee misconduct. As we have seen, some supervisors provide Garrity on all employee misconduct investigations, and some only when an employee requests it. Public employers must be educated on the fundamental rights of those they supervise, so as to protect their employees constitutional rights of due process.

When supervisors discipline an employee that affects their property or liberty interests in their job, a name clearing hearing must be provided to the employee. These few basic rights of employees must be safeguarded, or one-day, management will find a good attorney will cost their agency a lot of money in litigation, back pay and re-instatement.

Appendix A: From Junction City, Kansas, Police Department

**Interview Advice Of Rights
Garrity Warning**

I wish to advise you that you are being questioned as part of an official investigation of the Junction City Police Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office.

You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and to have a union representative of your choice present during questioning.

I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges, which could result in your dismissal from the Department. If you answer, neither your statements nor any information or evidence that is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.

I have read and fully understand the information contained above.

Interviewee: _____
Date: _____ Time: _____

Interviewer: _____
Date: _____ Time: _____

Witness: _____
Date: _____ Time: _____

Appendix B: From NJLawman.com

New Jersey Garrity Warning

1. I am being questioned as part of an investigation by this agency into potential violations of department rules and regulations, or for my fitness for duty. This investigation concerns

2. I have invoked my Miranda rights on the grounds that I might incriminate myself in a criminal matter.

3. I have been granted use immunity. No answer given by me, nor evidence derived from the answer, may be used against me in any criminal proceeding, except for perjury or false swearing.

4. I understand that I must now answer questions specifically, directly and narrowly related to the performance of my official duties or my fitness for office.

5. If I refuse to answer, I may be subject to discipline for that refusal which can result in my dismissal from this agency.

6. Anything I say may be used against me in any subsequent department charges.

7. I have the right to consult with a representative of my collective bargaining unit, or another representative of my choice, and have him or her present during the interview.

Assistant Prosecutor/Deputy Attorney General Authorizing:

Signature: _____

Date: _____ Time: _____

Location: _____

Witnessed by: _____

Appendix C: From Junction City, Kansas, Police Department

Administrative Interview Notice

This is an administrative interview not a detention. No physical or verbal attempt will be used to detain an interviewee who desires to leave at any time. Failure to participate in this interview by leaving, can create a separate act of insubordination that may lead to progressive discipline up to and including termination.

I acknowledge that this is only an administrative interview. _____

You are ordered and required to answer all questions fully, truthfully and to the best of your knowledge. If you refuse to answer questions specifically and narrowly related to the performance of your official duties and or fitness for office, you will be subject to departmental charges which will result in discipline up to and including termination, except that no disciplinary action will be taken for your exercise of rights as provided within the current labor contract.

Appendix D: From Junction City, Kansas, Police Department

Junction City Police Department

Miranda Warning

1. You have the right to remain silent. _____
 2. Anything you say may be used against you in a Court of Law. _____
 3. You have the right to have an attorney present during any questioning. _____
 4. If you cannot afford an attorney, the Court will appoint one for you. _____
-

Waiver

1. Do you understand each of these rights I have explained to you?

Yes: _____ No: _____

2. Having these rights in mind, do you wish to talk to me now?

Yes: _____ No: _____

Name: _____
(Printed)

Signature: _____

Date: _____ Time: _____

Witness: _____

Appendix E: From Shawnee County, Kansas, Sheriff's Office

**Internal Administrative Interview
Advisory Form - Civilian Employee**

Person to be Interviewed: _____

Case # _____ Date: _____ Time: _____

1.) Procedural Bill of Rights

Per the current Labor Contract, and contained within the Personnel Rules, are certain rights that an employee has. I acknowledge that I have had an opportunity to read those rights as set forth in the current labor contract and personnel rules and have a general understanding thereof. _____

2.) Notice of Right to Representation

You are entitled to have present during this interview a Union Representative.

I have chosen _____ to represent me during this interview. _____

3.) Administrative Interview Notice

This is an administrative interview and not a detention. No physical or verbal attempt will be used to detain an interviewee who desires to leave at any time. Failure to participate in this interview by leaving, can create a separate act of insubordination that may lead to progressive discipline up to and including termination.

I acknowledge that is only and administrative interview. _____

You are ordered and required to answer all questions fully, truthfully and to the best of your knowledge. If you refuse to answer questions specifically and narrowly related to the performance of your official duties and or fitness for office, you will be subject to departmental charges which will result in discipline up to and including termination, except that no disciplinary action will be taken for your exercise of rights as provided within the current labor contract.

Employee Signature

Witness Signature

Interviewer Signature

Appendix F: From Shawnee County, Kansas, Sheriff's Office

**Internal Administrative Interview
Advisory Form - Officers**

Person to be Interviewed: _____

Case # _____ Date: _____ Time: _____

4.) Procedural Bill of Rights

Per the current Labor Contract, the "Bill of Right" sets forth certain rights that an officer has.

I acknowledge that I have had an opportunity to read the "Officer's Bill of Rights" as set forth in the current labor contract and personnel rules and have a general understanding thereof. _____

5.) Notice of Right to Representation

You are entitled to have present during this interview a Union Representative.

I have chosen _____ to represent me during this interview. _____

6.) Administrative Interview Notice

This is an administrative interview and not a detention. No physical or verbal attempt will be used to detain an interviewee who desires to leave at any time. Failure to participate in this interview by leaving, can create a separate act of insubordination that may lead to progressive discipline up to and including termination.

I acknowledge this is only and administrative interview. _____

You are ordered and required to answer all questions fully, truthfully and to the best of your knowledge. If you refuse to answer questions specifically and narrowly related to the performance of your official duties and or fitness for office, you will be subject to departmental charges which will result in discipline up to and including termination, except that no disciplinary action will be taken for your exercise of rights as provided within the current labor contract.

Employee Signature

Witness Signature

Interviewer Signature

Appendix G: From Miami-Dade, Florida Police Department (2003).

**Complaint, Counseling and Discipline Manual
Rights of Employees**

Employees while under investigation and subject to interrogation for any reason that could lead to disciplinary action, demotion or dismissal, shall be afforded the following rights.

- a. The interrogation shall be conducted at a reasonable time.
- b. The interrogation shall take place at the work site.
- c. The employee shall be informed who is in charge of the investigation and who will conduct the interrogation, and who will be present during the interrogation.
- d. The employee will be informed of the nature of the investigation and the names of complainants.
- e. Interrogations will for reasonable periods of time allowing for rest periods.
- f. The employee will not be subjected to offensive language or threatened with transfer, dismissal, or disciplinary action.
- g. The interrogation will be recorded, included rest periods.
- h. If the employee under investigation is under arrest or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.
- i. Those employees covered by a Bill of Rights or a Bargaining Unit will have the right to representation during the interrogation.
(Chapter 15 Part 4 Annex C)

Appendix H: From the Commission on Accreditation of Law Enforcement Agencies (CALEA).

Professional Standards, Internal Affairs Sections have the responsibility to investigate the following (CALEA, 2006):

- a. Commission of a crime.
- b. Immorality.
- c. Violations of narcotic drug laws.
- d. Acceptance of a bribe, gratuity, or other illegal compensation.
- e. Malfeasance in office.
- f. Criminal assault.
- g. Theft.
- h. Release of confidential information without authority.
- i. Official misconduct.
- j. Intoxication.
- k. Unauthorized use of physical force.
- l. Sexual harassment.
- m. Unnecessary or unlawful injury to a prisoner.
- n. Employee substance abuse.
- o. Other acts of a serious nature.

Appendix I.

**TO: Kansas Internal Affairs Investigators Association (KIAIA)
Forty Member Agencies**

Attached is a research paper that I am writing for Ft. Hays State University, Titled the Rights of Police Officers.

When you get time I would like you to read it and offer any feedback that you might have.

A few questions you might think about:

1. What protocols does your agency follow on minor and more serious investigations on allegations of employee misconduct? Ex. Minor misconduct first line supervisors handle. Internal Affairs handles everything or just serious violations?
2. Does your agency have written guidelines (policy) on how to conduct Internal Affairs/Professional Standards Investigations?
3. Does your agency have department forms on Garrity, Miranda, and Weingarten Rights for Internal Affairs Investigations?
4. Does your agency have an employee's Bill of Rights?
5. Is your agency part of a Union or Bargaining Unit and if so, do they have a right to representation during an interview?
6. If your agency does not have a Union or Bargaining Unit, do they have a right to have someone represent them during an interview?
7. Are Loudermill Hearings or name clearing hearings afforded all employees prior to discipline?
8. Do you have separate forms for civilian employees vs. law enforcement officers?
9. Does your agency assist in the internal investigations of other public employees in your city or county?
10. Would you change or delete any information in this paper that you found confusing or thought was not relevant?

Thanks for your input.

Dan Breci

Appendix I. Continued - Answers

**TO: Kansas Internal Affairs Investigators Association (KIAIA)
Forty Member Agencies**

Question #1. The consensus was: It depends on the violation, seriousness and circumstances. All complaints or allegations of misconduct are forwarded to the Chief of Police, who then determines who will conduct the investigation. Some are forwarded back to the Watch Commander (sergeant) for follow-up, some are forwarded to the Patrol Commander (Captain), and then, if it is serious, or an in depth investigation will be needed, they are forwarded to Professional Standards / Internal Affairs Investigator.

Question #2. Twenty-Six Agencies had written guidelines. Fourteen agencies used guidelines from the Kansas Internal Affairs Investigators Association.

Question #3. Twenty-Two Agencies had forms for Garrity and Miranda Rights, but not Weingarten Rights. Eighteen Agencies included all three forms.

Question #4. Six Agencies Do. Thirty-Four Agencies Do Not.

Question #5. Eighteen Agencies have collective bargaining units and all adhere to the law by allowing the right to representation.

Question #6. None.

Question #7. Eighteen Agencies included the name Loudermill somewhere in their forms. All other agencies called it a pre-disciplinary hearing or felt their grievance procedure timelines met the due process standard to offer a name clearing hearing.

Question #8. Twenty agencies had separate forms to distinguish between officers and civilian employees.

Question #9. All agencies assist in the investigation of employee misconduct when requested by their city or county. Many agencies have conducted investigations on other departments by request of that agency or by referral from the Kansas Bureau of Investigation.

Question #10. Several did not understand what qualitative and quantitative research methods had to do with this research paper. Many did not know the Rights of Police Officers were extended to all public employees and that alone was worth their time reading the paper.

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